

*An introduction to
the proposed Ontario*

CONSUMER & **B**USINESS **P**RACTICES **C**ODE

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Ministry of
Consumer and
Commercial
Ontario Relations

The marketplace

At home and abroad, Ontario's marketplace is undergoing dramatic transition. Increased competition, freer trade, more sophisticated products, the growth of the service sector and new sales technologies such as telemarketing have already influenced and reshaped the way we buy and sell.

In such a climate, an honest and fair marketplace is vital. It is necessary to ensure consumers receive quality, service and satisfaction, and that business can compete on an equal footing. Everyone needs to know the rules of the marketplace. Just as importantly, everyone needs ways of obtaining just and timely solutions to disputes.

These are essential not only for consumer protection, but for the foundation of any healthy and efficient marketplace economy.

The new code

Recognizing the need for a new framework for marketplace legislation, the Ministry of Consumer and Commercial Relations has been working with consumer and business groups for more than two years to address marketplace needs of the nineties. The result is the development of an effective and practical Consumer and Business Practices Code, which will be introduced in the Ontario Legislature in the fall of 1990.

The Code will consolidate and simplify many hard-to-understand consumer and business practice laws that are on the books today. And it is intended to address new and growing areas of marketplace activity never comprehensively addressed in law before.

How the code will look

The proposed Consumer and Business Practices Code will set out clearly defined rights and responsibilities for both buyers and sellers. With a greater knowledge of these standards, an informed public can avoid problems. In addition, business will have a common set of rules so no one will be subject to competitive disadvantage.

Four basic principles form the foundation of the proposed Code. These principles are meant to establish legal standards of fairness for all participants in the marketplace—consumers, business and government.

Disclosure

This valuable principle helps ensure that marketplace participants receive accurate, understandable and timely information in order to make sound purchasing decisions.

Transactional fairness

Consumers and business people can reasonably expect to be treated fairly at every point of the selling/buying process—from the time a purchase is considered to after-sales service.

Fair value

Consumers are entitled to receive what they have been led to expect—they should not be vulnerable to after-purchase surprises.

Access to remedies/justice

When the standards of disclosure, fairness and fair value are not met, consumers and business will have better remedies and means of resolving disputes.

This clearer set of rules will allow individuals to seek redress at all levels of the court system if problems can't be resolved between the marketplace parties.

Not just goods, but services too

Most earlier consumer protection legislation applied to goods. The introduction of the Code, however, will mean that for the first time, consumers and business can look forward to the same standards of fair play applying to the rapidly growing service sector.

The Code will cover those businesses and individuals that provide legal, medical, most financial, repair and domestic-help services. As well, it will apply to companies that sell goods and services combined as a package—such as dishwashers and extended service packages.

Defining what's unfair

Unfair business practices create problems for businesses as well as consumers.

The Code will set clearer standards for fair and unfair selling practices which will benefit all of the marketplace partners. These standards will instruct business people including advertisers and advertising agencies and consumers, government and the courts.

The Code will also say it is an unfair practice:

- for a business to take advantage of children or other vulnerable consumers or to use high-pressure sales tactics with a person who doesn't understand all the information on what is being sold;
- to misrepresent a product or service for instance, a travel agent advertising a holiday package with a poster showing a resort on the beach when the actual hotel is separated from the ocean by a highway will be considered an unfair practice;
- to make false claims, for example, it's unfair for a manufacturing firm to state that its product will last a lifetime without adequate testing results to prove the claim. Similarly, it's unfair for a retailer to advertise new goods for sale, knowing the products are, in fact, used.

One of the most important provisions built into the new Code is that fairness applies whether or not a sale has actually been made. Thus, a company could be charged under the Code for distributing a flyer claiming prices have been reduced by 40 per cent when it's really charging their regular price.

What about warranties

Although many people associate warranties only with contracts pertaining to goods, the new Code will broaden the definition of warranties to include any written or oral statement about a service or product. Moreover, the Code will extend the responsibility for honoring certain warranties to manufacturers, importers, distributors and wholesalers.

To benefit from the Code's more comprehensive warranty provisions, consumers should be aware of the two types of warranties they will most likely encounter when buying a product or service.

Warranty given by law

The Code will clarify and consolidate rules about warranties currently given by law.

These include requirements that products are of acceptable quality and they are fit for the purpose for which they are intended. Also, the code will extend these warranties to services.

The new legislation will expand the responsibility for honoring certain of these warranties. For example, manufacturers would be responsible, by law, for warranting to consumers that its products are of an acceptable quality.

Express warranty

An express warranty is any statement (written or oral) or conduct made in relation to the product that can be reasonably relied upon by the consumer. For example, it could be either a promise that a product or service will live up to special expectations, or a manufacturer-provided warranty of two years on parts and labour for a videocassette recorder.

Taking the surprise out of repairs

The Code will extend to all types of repairs principles of consumer protection legislation that now apply only to motor vehicle repairs.

All repair work costing more than \$50—whether fixing a washing machine or repairing a leaky roof—will be covered.

Under the Code, repairers will be required to:

- issue written cost estimates on request; (The final price of a repair cannot exceed this amount by more than 10 per cent.)
- disclose service or labor rates as well as methods of calculating total charges;
- let customers know whether new or used parts will be used;
- provide reasonable estimates of when work will be completed;
- make itemized invoices of costs available;
- provide a warranty on parts and service for 90 days; and
- return removed parts on request.

Protection against remote sales

The Code will extend consumer protection not only for door-to-door sales but also, for the first time, to sales made through the increasingly popular forms of remote marketing such as mail order, telephone and television.

To reduce consumer risk, sellers will be required to:

- provide their name, business address and phone number;
- deliver goods or services within four weeks of order unless otherwise stated;
- for contracts where contact was initiated by a seller, allow a one-week cooling-off period during which consumers have the right to change their minds;
- provide a written contract with a description of the goods or service in door-to-door sales over \$50; and

- refrain from processing payments until the goods have been shipped, when products are ordered by phone or through the mail.

Businesses involved in telephone solicitation will be expected to abide by additional standards. For example, under the Code, representatives of telemarketing companies must:

- immediately identify themselves and state the purpose of the call; and
- not make repeat calls if the consumer doesn't want them.

Because telemarketing concerns can easily cross provincial borders and affect many jurisdictions, the ministry is looking at other ways of curbing abuse of these marketing techniques through participation on a joint federal/provincial task force.

Access to remedies/justice

The purpose of the Code will be to set out clear rights and responsibilities to help consumers know which questions to ask at the point of sale. In turn, sellers will be obligated to disclose all relevant information to allow consumers to make informed decisions. If the product is misrepresented or information misleading, consumers may cancel the contract and request a refund.

Consumers will also have the legal right to deal directly with a manufacturer over a dispute—rather than having to go through the seller.

As well, the Code will require sellers to disclose their policies on refunds and exchanges before purchases are made. If they don't, consumers can require that a refund or exchange be made within 10 days of a sale.

As a final resort, the new clarity of rules will give marketplace partners greater opportunities for redress through the court system in cases of unresolved disputes.



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In the process of developing the new Consumer and Business Practices Code, the Ministry of Consumer and Commercial Relations has relied extensively on the advice of both consumer and business groups: these included the Consumers' Association of Canada (Ontario), Canadian Federation of Independent Business, Canadian Manufacturers' Association, Ontario Chamber of Commerce and Retail Council of Canada. The collaboration between marketplace participants will continue after the Code is introduced. Work will soon begin on the development of relevant, easy-to-understand and fair rules that will set new standards for the complex and fast-changing area of credit transactions.

For more information on the Consumer and Business Practices Code, contact:

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